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September 17, 2007

Hon. Lester A. Heltzer Executive Secretary National Labor Relations Board 1099 14th Street N.W. Washington, D.C. 20570

Re: The Lorge School 2-CA-37967

Dear Mr. Heltzer:

Forwarded to the Board by electronic filing are Respondent's Exceptions to the Decision of the Administrative Law Judge in the above case and Respondent's Brief in Support of the Exceptions.

In accordance with Section 102.114(i) of the Board's Rules and Regulation, I have notified Counsel for all parties by telephone of the filing and will serve by overnight mail copies of the Exceptions and Brief. Copies are being served on all parties today by overnight mail.

Sincerely,

Daniel Silverman Counsel for Respondent

cc: Susannah Z. Ringel
Counsel for the General Counsel

Antonio M. Cavallero Counsel for the Charging Party

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Status of the Case

Upon a Complaint and Notice of Hearing issued by the Regional Director of Region 2, Administrative Law Judge Raymond P. Green issued a Decision on August 3, 2007 finding that Respondent violated Section 8(a)(1) by the discharge of the Charging Party, a supervisor, because she refused to commit an unfair labor practice. The matter was transferred to the Board and an extension of time to file exceptions was granted until September 17, 2007. Following are Respondent's Exceptions. An accompanying Brief is being filed simultaneously with these Exceptions.

Exceptions are filed to:

- **1. The ALJ's failure to find** that employee James Rouse called Executive Director Deborah Kasner as a "fucking bitch" and "garbage" and that he slammed the door in her face and said, "Something smells, I have to leave" when Kasner walked into the room. Transcript (T.) 699
- **2.** The ALJ's failure to find that Rouse harassed teaching assistant Concetta Diaz by telling her that she would be fired if she did not receive a State certification. T 170, 176, 284-90
- **3.** The ALJ's failure to find that Kasner's desire to rid the school of Rouse and Piccigallo had to do with their unprotected activity including Rouse's insults to Kasner, their refusal to deal constructively with criticism, their overreaction to legitimate inquiries about their conduct during school hours. T. 168, 175, 244; 341-45; 523-24, 699

4. ALJ p. 3 lines 22-24

The implication in the ALJ's finding that because the climate between management and the Union changed for the worse when Kasner took over, the change was due to Kasner's hostility to the protected activity of the employees, rather than the hostility of Rouse and Piccigallo to Kasner's legitimate attempts to improve the management of the School as required by the State Education Department. T. 166, 177

5. ALJ p. 3 lines 26 – 31; p. 10 lines 17-20

The ALJ's finding that Kasner refused to give Rouse the contact information he requested for all newly hired bargaining unit employees and that Kasner's week or two delay in providing the information to the Union due to her discomfort in providing contact information for employees who had not yet begun their employment, is evidence of anti union animus. (T. 288-290

6. ALJ p. 3 lines 36-42; ALJ p. 10 lines 6-16

The ALJ's conclusion that Kasner's statements that the prior administration had been soft on the teachers, allowed them to control the School and had made decisions affecting the School for fear of grievances and that she would show them who is the boss is evidence of anti union animus rather than a legitimate attempt to improve the functioning of the School in light of the poor evaluation form the State. T. 166, 172

7. ALJ p. 4 lines 23-24

The ALJ's failure to place in context Kasner's statement that she might have told Cooperman not to take Piccigallo at face value, to make clear that Kasner said that because Piccigallo, as an employee of nine years, knew where the IEP's were kept, his motives for feigning ignorance on this matter was suspect. T. 65-69, 501-503

8. ALJ p. 4 line 30, lines 31 to 35

The ALJ's finding that the testimony of Cooperman was corroborated by other witnesses when, in fact, nothing that Cooperman testified to was corroborated by other witnesses including those that the ALJ did not discredit. T. 69-70, 98, 403, 505-512, 566-569

9. ALJ p. 4 footnote 3.

The ALJ's finding that Rouse's conduct in harassing a teacher to make her cry was protected activity merely because the contract states that the Union has a role in teacher certifications.

10. ALJ p. 4 footnote 4.

The ALJ's findings that Dr. Dawes' opinions of Cooperman had nothing to do with the discharge of Cooperman when in fact Kasner related the substance of these conversation to Board Chair Bernard who authorized Kasner to proceed with discharging Cooperman. T. 38-43, 85, 418-420, 423, 597-598, 609

11. ALJ p. 5 lines 1-2

The ALJ's failure to note that Kasner provided the requested information to the Union on July 27, 2006. T. 289

12. ALJ p. 5 lines 4-5

The ALJ's finding that Cassandra Pierre attended the Friday, July 28 management meeting. T. 71,398, 509, 566

13. ALJ p. 5 line 9

The ALJ's inferential finding that Piccigallo was engaged in protected activity in stating that he did not have access to individual educational plans for the students which stimulated Osman's hostility to Piccigallo. T. 65-69, 501-503

14. ALJ p. 5 lines 4-21

The ALJ's failure to cite testimony of the other participants at the meeting, witnesses whom the ALJ did not discredit, disputing Cooperman's version. T. 69, 398- xxx, 508-512, 566-569

15. ALJ p. 5 lines 27-33

The ALJ's failure to cite the testimony of Sandra Kahn, David Osman, witnesses whom the ALJ did not discredit, that at the meeting in Osman's office, Cooperman said that Kasner was not fit to sit in the Chair [of Executive Director]. T. 70, 403, 505-507

16. ALJ p 7 lines 12- 33 p. 8 lines 1-39; p 9 lines 1 -28

The ALJ's reliance on testimony concerning events that occurred after the Charging Party was discharged to establish anti union animus as relevant to the discharge of the Charging Party and even assuming the relevance of the testimony of events that occurred after the discharge, the ALJ's conclusion that these events support the conclusion that the Respondent possessed unlawful anti union animus against Rouse and/or Piccigallo or anyone else. T 74-75

17. ALJ p. 8 lines 47-48 footnote 10

The ALJ's receipt into evidence and reliance on evidence that the Board has held is inadmissible.

- **18.** The ALJ's failure to find that Kasner's testimony that Cooperman threatened to report the School to the New York State Education Department immediately before she was discharged was memorialized in a file memorandum made by Kasner at the time. Respondent Exhibit 7, T. 611
- 19. The ALJ's failure to find that the decision to discharge Cooperman was actually made in a telephone conversation between Kasner and Board of Directors Chair Martha Bernard, that nothing was said during that conversation about a hostile work environment and that the only thing that was discussed was Cooperman's threat to go the New York State if she did not get her way on the pedagogical structure of the school that she was

insisting be implemented and other issues related to Cooperman's job performance and relationship with other employees and supervisors. T. 579-581, 609-610.

20. ALJ p. 9 line 46

The ALJ's conclusion that Kasner was probably unjustified in believing that Cooperman was going behind her back when undenied testimony of consultant Dr. Sandra Kahn, Contract Administrator David Osman and essentially admitted by Cooperman was that she was criticizing Kasner behind her back and thereby undermining her authority. T. 70, 403, 505-507

21. ALJ p. 10 line 1 – 5

The ALJ's finding that the "proximate and predominant reason" for the decision to discharge Cooperman was the latter's unwillingness to make life difficult for and force the resignations of the two union delegates, Rouse and Piccigallo and the application of this standard for evaluating whether there was an unfair labor practice rather than the *Wright Line* test.

22. ALJ p. 10 lines 22-24

The reliance on testimony attributed to Ms. Pierre allegedly made at a meeting on Friday July 28, 2006 since Ms Pierre was not alleged or found to be a supervisor or agent of management. T. 71, 398, 509, 566

24. ALJ p. 10 lines 26-30.

The ALJ's reliance of the testimony of employee Blowe that Kasner wanted to get rid of her headaches and his conclusion that even if made, the statement meant that Kasner wanted to get rid of Rouse and Piccigallo because of their protected union activities.

25. ALJ p. 11 lines 16-21

The ALJ's conclusion that the General Counsel has made out a strong prima facie case that Cooperman was discharged because she would not assist Kasner in forcing the resignations of Rouse and Piccigallo and that Cooperman was being asked to commit an unfair labor practice under Section 8(a)(1) and (3) of the Act.

26. ALJ p. 11 lines 21-24

The ALJ's totally unsupported statement that Respondent has not shown that it would have discharged Cooperman for reasons other than her refusal to commit an unfair labor practice.

27. ALJ p. 11 lines 24 52; p. 12 lines 1-45; p. 13 lines 1- 37; Appendix

The ALJ's conclusion that Respondent violated Section 8(a)(1) and direction of a remedy for the alleged violation.

Based on the foregoing and arguments set forth in the accompanying Brief in Support of Exceptions, Respondent respectfully requests that the Board grant the above Exceptions and dismiss the Complaint. In the alternative, if the Complaint is not dismissed, the Respondent respectfully requests that the Board remand the case to the Administrative Law Judges Division for an evaluation of the record without consideration of the improperly admitted testimony. Because the ALJ Green has expressed his inability to disregard the improperly admitted testimony, it is requested that the matter be assigned to a different Administrative Law Judge.

Respectfully submitted,

Counsel for Respondent

September 17, 2007